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May 22, 1963

MEMORANDUM

TO: Boston Redevelopment Authority

FROM: Edward J. Logue, Development Administrator

SUBJECT: Government Center Urban Renewal Plan  
Letter from Attorney for Owners of 10 State Street

On May 15, when I submitted to you a statement dated May 14 and signed by Claude Cross, Esquire, as attorney for the owners of the building at 10 State Street, I said that I would report to you promptly on the arguments in that statement.

Mr. Cross' letter, which I have studied carefully, presents no valid or substantial reason why the Authority should not adopt the Government Center Plan and the accompanying findings and resolutions as submitted by the staff. I shall hereinafter comment specifically on each of the six numbered arguments in Mr. Cross' letter, but, at the outset, I must point out one essential error which permeates Mr. Cross' statement generally and each of his arguments.

Throughout his letter, Mr. Cross assumes that 10 State Street is included in the Project Area in order that the land owned by his client (State Street Corporation) may be turned over, pursuant to some "understanding", to Cabot, Cabot & Forbes Co. so that the latter may build a building on that land for the use of the New England Merchants National Bank. That assumption is completely untrue. It is based on at least three misunderstandings of fact:



First, contrary to Mr. Cross' assumption, 10 State Street is included in the Project Area because, and solely because, in the opinion of our traffic and planning consultants, and in my opinion, the inclusion of 10 State Street within the Project Area is necessary for a sound, complete plan for the clearance of a decadent area and its most effective redevelopment. As the evidence which has been presented to you shows, 10 State Street must be included (1) to bring the Project to a sound boundary facing sound and stable structures, to make the boundary regular instead of a sawtooth line, and to eliminate the barrier constituted by buildings such as 10 State Street with their backs turned to the Project Area, (2) to establish a meaningful interrelationship between the Project Area and the financial and retail districts to the south of it, which can only be done by an appropriate building on Parcel 8, (3) to permit a visual link between the Old State House and the New City Hall (4) to provide a proper setting for the Old State House, (5) to eliminate a bottleneck of traffic on a too-narrow State Street (20 feet wide where at least a 33-foot width is needed), and (6) to make possible development sites which are marketable and permit the highest and best use of the land.

Second, only a small part of the property owned by Mr. Cross' clients at 10 State Street can be used for a new building. In fact, approximately 11 percent of the 10 State Street site is to be used for the necessary widening of State Street, an additional 32 percent of that property will be devoted to public open space



(i.e. Washington Street Mall), and at least 37 percent, although it is to be conveyed to the eventual redeveloper of Parcel 8, must be left forever open in order to provide the proper setting for the Old State House. Thus only 20 percent, at most, can be occupied by a new building.

Third, Mr. Cross' assertions that the Authority and/or I have an "understanding" or have "made a deal" with Cabot, Cabot & Forbes or the New England Merchants National Bank, and that the Plan requires that Cabot, Cabot & Forbes be the redeveloper of Parcel 8 are without any basis in fact.

As I stated in my testimony on April 17 (quoted in part by Mr. Cross on page 3 of his letter), I.M. Pei Associates in the spring of 1961 reported to me their conviction that a successful plan must provide for both the elimination of existing buildings at 10 and 28 State Street and the construction of an office tower on Parcel 8 for reasons set forth above. This planning proposal and nothing else was the origin of the idea of the taking of 10 State Street, the street changes and proposed new tower. Even though after study I was convinced of the importance of the Pei proposals, I felt - and I still feel, that I could recommend those proposals to you only after I had ascertained that the Pei proposal for reuse of Parcel 8 was workable. I therefore contacted Mr. Gerald W. Blakeley, Jr., President of Cabot, Cabot & Forbes, an established Boston real estate development firm, and subsequently other firms, and discussed with them the feasibility of the Pei proposal. I also had



similar discussions with the New England Merchants National Bank, which would be entitled to preference under the Authority's business relocation policy. When those discussions indicated that the proposed reuse of Parcel 8 would in fact be feasible, in that there was at least one redeveloper (Cabot, Cabot & Forbes) who was ready to come forward for Parcel 8, I felt that I could responsibly recommend to you the adoption of the Fei Plan.

Contrary to the implications in Mr. Cross' letter, the Government Center Renewal Plan does not require, expressly or by implication, that Cabot, Cabot & Forbes or any other specific person be the redeveloper for Parcel 8. The Authority has not yet decided how the redeveloper for Parcel 8 will be chosen, much less who that redeveloper will be.

Mr. Cross cites as supposed proof of his claim that an understanding exists in violation of federal law: (a) an Authority press release which summarizes the controls for Parcel 8, but says nothing as to who the redeveloper might be, (b) an entirely erroneous news story in the Boston Traveler; and (c) a press release in which Cabot, Cabot & Forbes describes the proposal which, as even the portion Mr. Cross quotes makes clear, it intends to submit to the Authority for approval. Obviously, none of these quotations is even evidence - much less proof - of Mr. Cross' claim. I have not, and clearly the Authority has not, made any commitment or contract or



any assumed/obligation with respect to redevelopment of Parcel 8 which could be an "understanding" within the meaning of the federal law which Mr. Cross cites.

Keeping the foregoing in mind, I would now like to comment briefly on each of Mr. Cross' six points.

(1) In his first argument, Mr. Cross claims that the Authority's adoption of the Plan would violate the Massachusetts constitution, even though the constitutionality of the urban renewal statutes has been repeatedly upheld by the Massachusetts Supreme Judicial Court and the United States Supreme Court. Indeed, Mr. Cross concedes that in general this Authority has the power "to take land, to regulate its use thereafter, and to dispose of it to private enterprise"; however, he claims that the separation-of-powers guarantee of the Massachusetts constitution would be violated in this particular case because, Mr. Cross says, the Plan before the Authority "contemplates that the Authority ... dispose of the land to Cabot, Cabot & Forbes Co.". The separation-of-powers argument under Article XXX of the Constitution thus rests upon a factual assumption - that Parcel 8 has already been "bargained" away - which, as I have already demonstrated, is clearly erroneous.

Incidentally, my statement that this is "the first time land was disposed of before plan approval" is quoted out of context on Page 3 of Mr. Cross' letter; my statement, of course, referred to Parcel 5 (the federal site), not Parcel 8. This federal site was

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sold to the General Services Administration after a public hearing and all of the approvals required by Federal and State Law. This was indeed the first time that these provisions or the early land acquisition law had been used.

(2) The second argument in Mr. Cross' letter is based upon the claim that I have made an "understanding" with a redeveloper for Parcel 8, which "understanding" will somehow be ratified by the Urban Authority's adoption of the proposed Government Center/Renewal Plan, and that thus the public disclosure requirements of federal law would be violated. As the foregoing statements indicate, this claim is entirely unfounded in fact.

(3) Mr. Cross also claims that "there is no demonstration that federal funds are necessary or that private enterprise cannot accomplish the desired result" because Mr. Cross' clients are "ready, willing, and able ... to construct a new office building" on the 10 State Street property.

This argument misconstrues the whole nature of the urban renewal process. As has already been fully demonstrated, the inclusion of 10 State Street in the Government Center Project Area is a prerequisite to the sound redevelopment of an area which is decadent. It is well settled as a matter of law that, even if a particular building such as the one at 10 State Street were found to be standard, that is not the controlling factor. Decisions in Massachusetts and numerous other jurisdictions have made clear that



the controlling factor is the character of the area as a whole. The facts about the decadence of this particular project area are clear and uncontroverted.

The alleged willingness of Mr. Cross' clients to redevelop the 10 State Street property does not meet the requirements for the renewal of the area. Mr. Cross does not say that his clients will conform to the controls of Parcel 8. If they are indeed interested in redevelopment of Parcel 8 (which is only in part the land on which their building is located) in accordance with the provisions and controls of the Plan, they are free to submit a proposal to the Redevelopment Authority for its consideration.

As to the necessity of federal financing aid, the question is, as the very authorities quoted by Mr. Cross on page 6 of his letter make clear, whether federal funds are necessary to achieve the whole project and to redevelop the Project Area as a whole. It seems too obvious to require discussion that the Government Center Project can become a reality only with federal aid, and nothing Mr. Cross says even suggests the contrary.

(4) Mr. Cross' statement that the Plan cannot be carried out under the zoning laws assumes that the present zoning law will govern. However, the Zoning Commission of the City of Boston has duly



adopted a new Zoning Code for the City which will become effective without the necessity of further action by anyone on April 2, 1964, well before /any construction on Parcel 8 will be commenced. The height, dimension and density controls of Parcel 8 are consistent with that new Code.

(5) In the opinion of the staff, the Government Center Urban Renewal Plan clearly conforms to the comprehensive plan for the municipality as a whole. Detailed testimony to this effect was given at the April 17 public hearing by the Deputy Planning Administrator, David A. Crane.

Even if all portions of the publication "A General Plan for the Central Business District" to which Mr. Cross refers are deemed to be part of "the comprehensive plan for the municipality as a whole" (although only pages 25 through 45 of that publication are devoted to the plan itself), nothing in that plan precludes acquisition or clearance of a substantial building. Mr. Cross also errs in stating that "the General Plan incorporates by reference the Detailed Study prepared by the City Planning Board". In fact, the General Plan (p. 48) only states that the "proposals for land use, street changes, open space, and block patterns in that study are incorporated". In the opinion of the staff the Government Center Plan presented to you does conform to the land use, street changes, open space, and block pattern proposals of the Planning Board study. Moreover, contrary to Mr. Cross' statement, the Plan presented to you will result in density well within the range recommended by the General Plan, for the average aggregate floor area ratio in the Government Center Project Area will be less than 10.



Furthermore, as the General Plan itself makes clear (e.g., pp. 25, 53), it is intended only as preliminary study - a formulation of objectives - upon which future planning decisions are to be based. It is not the function of a general plan to be specific about which buildings are to be acquired and which are not to be acquired in any given urban renewal project area.

Comprehensive planning cannot include the kind of detailed studies upon which such decisions are based, and the City Planning Board's General Plan did not purport to do so.

(6) Mr. Cross' final complaint - that the Authority did not give adequate and proper notice of the April 17 hearing - does not warrant extended discussion. Notice was given by publication in most major Boston newspapers, and Mr. Cross admits that his clients received actual notice by mail dated April 3, 1963. The notice given complies with the requirements of federal law and was, in the opinion of both the General Counsel and the Special Counsel of the Authority, adequate, proper and due notice.

As this memorandum indicates, the objections of the representatives of the owners of No. 10 State Street have been carefully considered, and, I believe, are uniformly without sufficient weight to warrant further delay in the approval of this most important project.

I recommend that the Authority approve the resolutions and findings now before it.

